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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

KRISTOPHER SZALONEK
235 Newport Avenue
Grover Beach, CA 93433

Initial Probationary License Number PT 36398

Applicant.

Case No. 1D 2009 67592

OAH No.

STATEMENT OF ISSUES

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Statement of Issues solely in his official capacity as the Executive Officer of the Physical Therapy Board of California (Board), Department of Consumer Affairs.

2. On or about August 2, 2009, the Board received an application for a Physical Therapy License from Kristopher Szalonek (Applicant). On or about January 6, 2010, the Board issued an Order Granting Initial Probationary License as a Physical Therapist, and issued license number PT 36398 to Applicant, for a period of three (3) years subject to numerous terms and conditions, with an expiration date of August 31, 2011.

3. On or around January 11, 2010, Applicant requested a request for a hearing to appeal the issuance of the Initial Probationary License.

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JURISDICTION

ues is brought before the Board under the authority of the

following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. On January 6, 2010, the Board issued an Order Granting Initial Probationary License as Physical Therapist, issuing applicant a three year probationary license subject to various terms and conditions. A true and correct copy of the Order Granting Initial Probationary License as a Physical Therapist is attached hereto as Attachment "A" and incorporated herein as if fully set forth.

STATUTES AND REGULATIONS

6. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when an order granting probation is made suspending the imposition of sentence.

7. Section 2660 of the Code states, in pertinent part:

"The board may impose probationary conditions upon any licensee issued under this chapter for unprofessional conduct that includes, but is not limited to. . .:

"(a) - (c)

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

"(e) & (g)

"(h) Conviction of a violation of any of the provisions of this chapter or of the Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting

violate any provision or term of this chapter or of the Medical

"(i) - (m)."

8. Section 2661 of the Code states, in pertinent part:

"A plea of guilty or a conviction following a plea of nolo contendere of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a conviction within the meaning of this article. The board may decline to issue a license, when an order granting probation is made suspending the imposition of sentence.

9. Section 2660.2 of the Code states, in pertinent part:

"(a) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct but who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

"(1) Medical or psychiatric evaluation.

"(2) Continuing medical or psychiatric treatment.

"(3) Restriction of the type or circumstances of practice.

"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of physical therapy.

"(b) The applicant shall have the right to appeal the denial, or the issuance with terms and conditions, of any license in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

10. California Code of Regulations, title 16, section 1399.20, states:



, suspension or revocation of a license, pursuant to Division 1.5
of the code, a crime or act shall be considered to be substantially

related to the qualifications, functions or duties of a person holding a license under the Physical
Therapy Practice Act if to a substantial degree it evidences present or potential unfitness of a
person to perform the functions authorized by the license or approval in a manner consistent with
the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
violation of, or conspiring to violate any provision or term of the Physical Therapy Practice Act.

"(b) Conviction of a crime involving fiscal dishonesty arising out of or in connection with
the practice of physical therapy.

"(c) Violating or attempting to violate any provision or term of the Medical Practice Act."

VEHICLE AND PENAL CODE STATUTES

11. Vehicle Code section 23152 states, in pertinent part:

õ(a) It is unlawful for any person who is under the influence of any alcoholic beverageí to
drive a vehicle.ö

õ(b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in
hisí blood to drive a vehicle.ö

õ. . . .ö

õ(c) - (f).ö

12. Penal Code section 647, subdivision f, states, in pertinent part:

õEvery person who commits any of the following acts is guilty of disorderly conduct, a
misdemeanor:ö

õ(a) ó (e)ö

õ(f) Who is found in any public place under the influence of intoxicating liquorí in a
condition that heí is unable to exercise care for hisí safety or the safety of othersí .ö

õ(g) ó (k).ö

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415, subdivision 2, states, in pertinent part:

ons shall be punished by imprisonment in the county jail for a

period of not more than 90 days, a fine of not more than four hundred dollars (\$400), or both such imprisonment and fine:

ö(1)ö

ö(2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.ö

ö(3)ö

CAUSE FOR DENIAL OF APPLICATION

(Conviction of a Crime)

14. Applicant's application is subject to denial under Business and Professions Code sections 480, subdivision (a)(1), 2660, 2660.2, and 2661 for having been convicted of a crime that is substantially related to the qualification, function or duties of a physical therapist. The facts and circumstances are as follows:

15. On or about June 4, 2009, a criminal complaint was filed in the proceeding entitled, *The People of the State of California v. Kristopher William Szalonek*, in the San Luis Obispo County Superior Court, Case Number M433369, charging applicant with two (2) counts of driving under the influence of alcohol in violation of Vehicle Code section 23152, subdivisions (a) and (b), misdemeanors. The facts and circumstances are as follows:

a) On or about May 30, 2009, applicant was pulled over by the Pismo Police department for a motor vehicle violation. When the officer spoke with applicant, he smelled a heavy odor of alcoholic beverage and observed that applicant's eyes were bloodshot and glassy and his speech was slurred. Applicant admitted to consuming several beers earlier, and submitted to a Preliminary Alcohol Screening (PAS) test which registered his blood alcohol level at .131 percent, well over the legal limit of 0.08. Applicant was thereafter arrested for driving under the influence of alcohol.

16. On or about September 17, 2009, applicant pleaded no contest to, and was convicted of Count 2, driving a vehicle with a blood alcohol level of .08 or above, a violation of Vehicle

(b), a misdemeanor. Count 1 was dismissed by the court in the
r, the court imposed sentence and ordered applicant to spend two

(2) days in jail, pay a fine in the amount of \$1,872.00, complete a three (3) month first offender
DWI program, and was placed on three (3) years probation, with various terms and conditions.

FACTS IN AGGRAVATION

17. On or about April 18, 2006, a criminal complaint was filed in the proceeding entitled
The People of the State of California v. Kristopher William Szalonek, in Riverside County
Superior Court, Case Number SWM048047, charging applicant with one count of public
intoxication in violation of Penal Code section 647, subdivision (f), a misdemeanor. The facts
and circumstances are as follows:

a) On or about March 16, 2006, at approximately 1:30 a.m., applicant was at the
night club Silk when he attempted to enter the VIP area without the necessary wrist band
allowing entry. Applicant forced his way past the officer refusing his entry. Applicant was
escorted out of the VIP area, was told he was no longer welcome inside the club, and was then
escorted out of the club itself. A few minutes later, applicant was seen inside the club attempting
to access the VIP area again. At that time, applicant was escorted to the Detective's office for
questioning where he was noted to have a strong odor of alcohol, his eyes were bloodshot and
watery, his speech was slurred, and he swayed and staggered. Applicant was thereafter placed
under arrest for public intoxication.

18. On or about May 12, 2006, the complaint was orally amended to add Count 2, a
violation of Penal Code section 415(2), disturbing the peace. Applicant was convicted by plea of
guilty of violating Penal Code Section 415, subdivision (2), an infraction. Count 1 was
dismissed by the court in furtherance of justice. Applicant was ordered to pay, and paid a fine in
the amount of One Hundred Forty dollars (\$140.00).

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Denying the application of Kristopher Szalonek for an Unrestricted License;



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of Kristopher Szalonek for an Unrestricted License; and
and further action as deemed necessary and proper.

DATED: July 23, 2010

Original Signed By:

STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant

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